IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM NO.53503-M of 2006
DATE OF DECISION.8.12.2006

Molu Ram .....Petitioner

Versus

State of Haryana .....Respondent

CORAM HON'BLE MR. JUSTICE AJAI LAMBA

PRESENT Mr.Hemant Bassi, Advocate
Ms.Ritu Punj, DAG, Haryana.
Mr. R. K. Mathur, Advocate
for complainant.

AJAI LAMBA , J(Oral)

While issuing notice of motion, the following was noticed:-

"*The facts as pleaded are that one tractor was owned by Nihal Singh, Sona Devi and Bimla Devi who were the registered owners and it was hypothecated with a bank. Despite these three persons being registered owners, the tractor was being used by Rohtash , the complainant. Rohtash sold the tractor to one Hawa Singh and Hawa Singh sold the tractor to petitioner Molu Ram, who further sold it to one Ajit Singh. The factum of sale was not recorded in the office and the possession of registration certificate was transferred to the next owner as per the transaction indicated above.*

Rohtash complainant allegedly had business dealings with the petitioner and on account of those differences, a complaint was instituted on 8.6.2006 which is appended as Annexure P1. The complainant made allegations under Section 406 IPC against the petitioner to the effect that the tractor was lent to the petitioner, however, same was not returned and therefore, it was a case of mis-appropriation against the petitioner and his two sons.

A prayer in the complaint was made for registration of FIR under Section 156(3) Cr. P. C , however, the Magistrate went ahead in recording preliminary evidence. During proceedings, the matter was referred for inquiry under Section 202 of the Code of Criminal Procedure to the police . On inquiry, the report was submitted which is Annexure P2 and is dated 20.7.2006. The inquiry agency i.e police concluded that no offence has been made out. Subsequently on the receipt of the report, complaint was withdrawn on 24.7.2006. On 26.7.2006, yet another complaint was made while repeating the same story however, it has been added in this subsequent version that the affidavits of Sona Devi, one of the original registered owners were forged.

The Magistrate considering the complaint, referred the matter for investigation under Section 156(3) Cr. P.C.

On these facts, it is pleaded by the learned counsel that the complainant had approached Court having competent jurisdiction with the certain set of facts. Facts as being pleaded in the present case were available even at that point of time, however, no such allegations were made. Complaint having been made and inquiry having shown the petitioner innocent in the earlier complaint with reference to same incident, at this stage, no cognizance of such offences can be taken on second complaint as the malafide intention of the complainant is clearly spelt out. The case has been instituted on account of business rivalry.

It is not disputed by the learned counsel appearing for the respondent / State on instructions from ASI Nihal Singh that on the earlier complaint, an inquiry was ordered under Section 202 Cr. P. C. The police investigated / inquired the matter and found that no offence has been made out. The complaint subsequently was withdrawn by the complainant on 24.7.2006. Such being the case and one investigation / inquiry having been conducted under Section 202 Cr. P. C, I am of the considered opinion that the petitioner is entitled to the concession of bail.

The other fact that needs to be mentioned is that Nihal Singh, Sona Devi and Bimla Devi were the registered owners of the tractor which was hypothicated with the bank. Despite such facts, the tractor was transferred to Rohtash. Rohtash sold the tractor to Hawa singh and it was Hawa Singh who sold the tractor to the petitioner. Nihal Singh, Sona Devi and Bimla Devi are not the accused.

The petition is allowed. Order dated 5th September, 2006 is hereby made absolute and it is directed that in the event of arrest, the petitioner shall be enlarged on bail on furnishing of bail bonds to the satisfaction of the Arresting / Investigating Officer, subject to the following conditions:-

i) the petitioner shall make himself available for interrogation as and when required;
ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
iii) the petitioner shall not leave India without the previous permission of the court.

This order shall enure till 10 days after the petitioner receives a notice of filing of final report under Section 173 Cr. P. C , within which period the petitioner would be at liberty to apply for regular bail.

December 8,2006 **(AJAI LAMBA)**
mamta **JUDGE**